

**Before the  
Federal Communications Commission  
Washington, DC 20554**

**FCC 17M-29**

In the Matter of	)	EB Docket No. 14-82
	)	
<b>PATRICK SULLIVAN</b>	)	FRN: 0003749041, 0006119796,
(Assignor)	)	0006149843, 0017196064
	)	
and	)	Facility ID No. 146162
	)	
<b>LAKE BROADCASTING, INC.</b>	)	File No. BALFT-20120523ABY
(Assignee)	)	
	)	
For Commission Consent to the Assignment of	)	
License of FM Translator Station W238CE,	)	
Montgomery, Alabama	)	

**ORDER**

**Issued:** August 15, 2017

**Released:** August 15, 2017

Prior to the hearing that began on May 3, 2017, Lake Broadcasting, Inc. (Lake) filed on April 21, 2017 a Motion in Limine to Disqualify Tamara Gremminger As an Expert Witness and Reject Her Direct Case Testimony (Motion). The Enforcement Bureau (Bureau) filed an Opposition on May 11, 2017. The Motion concerns the Bureau's witness Tamara Gremminger (Gremminger), and her status as an expert based on her qualifications and experience in threat assessment of released sex offenders as a specialized parole officer with the Missouri Department of Corrections.

Lake argues that Gremminger does not meet any of the requirements of an expert witness under Federal Rule of Evidence (FRE) 702. Lake also argues that Gremminger's testimony is based "almost entirely upon unproven hearsay contained in Missouri Department of Corrections records," and is thus inadmissible under 703. Motion at 2. Finally, Lake argues – again – that Gremminger should be disqualified due to the confusion and speculation regarding her lack of communication with the Bureau for several months.

As for the last argument, Lake has not offered anything beyond conclusory arguments to cause the Presiding Judge to doubt Gremminger's credibility based on that episode. Gremminger has testified under oath that she had been told by supervisors not to communicate with the

Bureau because someone had called and lodged a complaint,<sup>1</sup> but she was not given any information beyond that. Tr. at 489:18-490:5 (May 4, 2017). There is no evidence to suggest that Gremminger acted in bad faith, and the Presiding Judge has already made clear that he does not hold the incident against Mr. Rice or Lake. See Tr. at 129:12-16 (Feb. 16, 2017). Therefore, the Presiding Judge considers the matter at rest unless Lake has more specific and factually supported allegations to offer.

Accordingly, the remaining issues for determination are: (1) whether Gremminger qualifies as an expert, and (2) whether her proposed testimony is admissible.<sup>2</sup>

As the sponsoring party, the Bureau proffered Gremminger's education and experience. Gremminger received a degree from the University of Missouri in criminal justice. Thereafter, she attended and graduated from the St. Charles County Law Enforcement Academy. She was hired by the St. Charles County Sheriff's Department as a corrections officer, and later in 1993 by the Missouri Department of Corrections as a parole officer and sex offender specialist, where she still works, supervising sex offenders on parole. In the last four years, Gremminger has testified in about 25 state criminal trials as an expert in the "risk assessment" of sex offenders with regard to their risk of reoffending.<sup>3</sup>

Lake argues that Gremminger does not have "any advance [*sic*] academic degrees or any professional licenses," nor does she appear to have "any supervisory position or experience." Motion at 2-3. However, as the Bureau correctly points out, none of those things are required for a witness to be qualified as an expert. FRE 702 requires only that a witness be qualified by virtue of his or her "knowledge, skill, experience, training, or education." Gremminger has had extensive training,<sup>4</sup> as well as over 20 years of experience as a sex offender specialist at the Missouri Department of Corrections.

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<sup>1</sup> Bureau counsel initially indicated that a "colleague [of Gremminger's] informed the Bureau that apparently someone claiming to represent Mr. Rice had threatened to pursue legal action against Ms. Gremminger if she continued to participate in the Commission's hearing process." See Bureau Motion Concerning Expert Witness Documentation at 2 (filed Dec. 12, 2016). However, once Bureau counsel was able to get in contact with Gremminger directly, Gremminger told them that she was unaware of the identity of the caller. Tr. at 130:21-131:4 (Feb. 16, 2017).

<sup>2</sup> Before ruling, the Presiding Judge elected to observe and assess Gremminger on the witness stand during *voir dire* by Lake's counsel.

<sup>3</sup> The Bureau has submitted in a status report the defendant name, date, court, and judge for each state case in the last four years in which Gremminger opined on a sex offender's risk to reoffend. See Enforcement Bureau's Second Supplemental Status Report at 2-3 (filed March 2, 2017).

<sup>4</sup> While Lake argues without explanation that "only two of [Gremminger's] courses appear to have anything to do with re-offending risk assessment," Motion at 3, Gremminger's testimony on the stand during cross-examination demonstrates that in fact the majority of her 40 courses relate to this area. Tr. at 459:10-485:3 (May 4, 2017).

Based on the above, Gremminger will be permitted to testify as a qualified expert in assessing the re-offense risk of sex offenders.<sup>5</sup>

The next question for determination is whether the expert testimony of Gremminger is relevant and meets the hearsay exceptions to the Federal Rules of Evidence (FRE). Gremminger's testimony is clearly relevant, given her experience as a sex offender specialist at the Missouri Department of Corrections.<sup>6</sup> With regard to whether Gremminger's testimony meets the FRE hearsay exceptions, documents relied on by Gremminger readily meet the standard of FRE 803(8) (public records or reports, including observations and evaluations), as well as FRE 803(6) (business records kept in the course of regularly conducted activities). Public documents prepared in discharge of governmental functions, including such documents containing fact, opinion, and/or conclusion,<sup>7</sup> are considered trustworthy unless shown otherwise, which Lake has not done.<sup>8</sup>

And as for reliance on these records by Gremminger in her testimony, the records at issue will be considered and afforded an assessment of their weight.<sup>9</sup>

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<sup>5</sup> The Commission's policy is to recognize by comity the expertise of local law enforcement, including with regard to sex offenders. *Cf. In re David Titus*, 29 FCC Rcd 14066, 14072 (2014), *petition for reconsideration pending* ("[L]ocal authorities responsible for keeping the peace and enforcing the law are better positioned to make the determination whether an individual poses a danger to the community than is the Commission. . . . It is especially appropriate to defer to state judgments about sex offenders, in view of the fact that many states treat sex offenders differently from other felons.") (footnote omitted)). But common law and common sense dictate that assessments must be relevant, credible, and reliable in order to receive any reliance.

<sup>6</sup> The Bureau stated explicitly during the hearing that Gremminger is only being tendered as expert witness, not as a fact witness based on personal knowledge, and that is the only capacity in which her testimony is being considered. Tr. at 495:7-496:4 (May 4, 2017).

<sup>7</sup> See *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 169-170 (1988). See also *United States v. Harris*, 557 F.3d 938, 941-942 (8th Cir. 2009) (particularly parole and probation records are excepted hearsay).

<sup>8</sup> Lake argues that the Missouri Department of Corrections records "are only admissible as business records of the Department and NOT to prove the truth of the facts asserted therein." Motion at 4. However, that argument is a contradiction in terms. Business and public records are *exceptions* to the hearsay rule, and therefore *are* admitted for the truth of the matters asserted therein under FRE 803.

<sup>9</sup> See FRE 703 (expert opinion may be based on any facts or data typically relied on in that field).

Therefore, **IT IS ORDERED** that Lake's Motion in Limine to Disqualify Tamara Gremminger As an Expert Witness and Reject Her Direct Case Testimony **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION<sup>10</sup>

A handwritten signature in black ink, reading "Richard L. Sippel". The signature is written in a cursive, flowing style with a large initial 'R'.

Richard L. Sippel  
Chief Administrative Law Judge

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<sup>10</sup> Courtesy copies of this Order will be sent via email to each counsel of record on the date of issuance.